

**REMARKS:**

In the Office Action mailed July 28, 2006,

Claims **1-35** were allowed;

Claim **38** was rejected under 35 USC 112, second paragraph;

Claims **38** and **38** were rejected under 35 USC 102(b); and

Claim **37** was rejected under 35 USC 103(a).

**Claim Amendments**

Claim **20** has been amended to correct a minor grammatical error, thereby improving readability of the claim. Applicant submits that this amendment is not being made for any reason related to patentability and does not narrow any limitation of the claim. As such, no new matter is presented. Claim **38** has been amended as discussed below.

**Claim Rejections-35 USC § 112**

Claim **38** was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In rejecting claim **38**, the Examiner states that claim **38**, which is dependent on claim 36, recites the limitation “the variable optical material” in line 1. The Examiner argues that there is insufficient antecedent basis for this limitation in the claim. To expedite prosecution, Applicant has amended claim **38** to depend from claim **37**, which recites “a variable optical material”. As such, Applicant submits that claim **38** is no longer indefinite.

**Claim Rejections-USC § 102**

Claims **36** and **38** were rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. patent No. 6,201,601 to Vaez-Irvani et al (hereafter ‘601).

In rejecting claim **36**, the Examiner states that the ‘601 patent teaches a method for enhancing a signal to noise ration in a sample inspection system (see figure 2a below) including:

In a sample inspection system of the type having collection optics including a collection optics (78) that receive radiation scattered from a point on a sample surface (76a) proximate a symmetry axis of the collection optics and the scattered radiation toward a detector (PMT 80), a method of enhancing a signal to noise ratio, the method comprising the steps of:

Collecting part of the scattered radiation wherein a signal from defects on the surface is distinguishable from a background noise due to surface roughness; and in response to an image,

selectively screening the detector from portions of scattered radiation corresponding to background noise (see columns 11 and 12, also Figures 9A-9F).

In rejecting claim **38**, the Examiner states that ‘601 discloses a variable optical member comprising of a liquid crystal display member (98, Figure 2A; see also Figures 10A, 10B, also column 11, lines 60-67 through column 12, lines 1-22).

Applicant respectfully traverses both rejections. Applicant notes that the ‘601 patent does not teach or suggest selectively screening the detector from portions of the scattered radiation corresponding to the background noise “*in response to the image*” as set forth in claim **36**. Instead, the cited sections of ‘601 teach fixed and variable spatial filter designs. A word search of the ‘601 patent reveals that the word “image” does not appear in the text of the patent. The ‘601 patent does describe recording data obtained with the detector 80 (see col. 6, lines 22-39). However, the ‘601 patent does not describe, teach or suggest in column 11, column 12 or anywhere else how to selectively screen the detector from portions of scattered radiation corresponding to background noise, either automatically or manually, *in response to* data obtained with the detector. It is further noted that while of the ‘601 patent’s Figures 2A, 2B, 3, 4, 5A and 5B all show a location 300 for the spatial filter and a controller 400, the spatial filter location 300 is not shown or described as being coupled to the controller 400. As such, Applicant submit that the ‘601 patent does not teach all the features of claim **36** and a prima facie case of anticipation is not present. In addition, claim **38** is believed to be patentable by virtue of its dependence on claim **36**.

### **Claim Rejections-35 USC § 103**

Claim 37 was rejected under 35 U.S.C. 103 (a) as being unpatentable over ‘601 as applied above. In rejecting claim 37, the Examiner states that ‘601 teaches a programmable spatial filter including variable optical material having a plurality of geometric shapes, each shape being selectively configurable in either a first state or a second state, the shape being substantially opaque in the first and substantially radiation transmitting in the second state (see analysis with respect to claim 38 above, especially column 11, lines 60-67 through column 12, lines 1-22). The Examiner argues that although Figure 10B teaches a circular spatial filter with pie shaped wedges, ‘601 teaches that the shapes can take any number of formations. (See column 12, lines 18, 23). The Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time of invention to use a pixilated spatial filter in the apparatus and method of ‘601 so

as to achieve a highly configurable spatial filter for improving selective scattered noise blocking and hereby improving the sound to-noise-ratio.

In response, Applicant submits that claim **37** depends from claim **36** which recites “selectively screening the detector from portions of the scattered radiation corresponding to the background noise *in response to the image*” [emphasis added]. Applicant submits that, for the reasons discussed above, the ‘601 patent is devoid of any teaching or suggestion of such a feature. As such, a prima facie case of obviousness is not present.

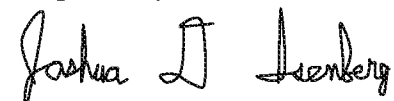
#### **New Claim 39**

Applicant submits that new claim **39** depends from claim **36** and is allowable for the reasons set forth above. Applicant further submits that claim **39** recites features found allowable by the Examiner in claim **32**. Applicant submits that, for at least this additional reason, claim **39** is allowable over the prior art of record.

#### **CONCLUSION**

For the reasons set forth above, the Applicants submit that the claims are neither vague nor indefinite. Furthermore, for the reasons set forth above, the Applicants submit that the claims as they presently stand in the application are allowable over the cited prior art. Therefore, the Applicants respectfully request that the Examiner issue a Notice of Allowance in the next Office Action.

Respectfully submitted,



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